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DIRECTOR GENERAL OF RAILROADS *v.* BLUE.

Nov. 17, 1921.

[109 S. E. 482.]

**1. Railroads (§§ 313, 317\*)—Violation of Ordinances Negligence.**—Violation of ordinances limiting speed and requiring the ringing of a bell on an engine approaching a crossing negligence.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 127 et seq.]

**2. Railroads (§ 327\*)—Pedestrian Crossing Tracks Held Negligent.**—A pedestrian crossing double tracks in clear view for 1,200 feet who was struck by a backing engine running at an unlawful speed without signal held guilty of contributory negligence in failing to observe the engine on the second track.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 127 et seq.]

**3. Railroads (§ 338\*)—Last Clear Chance Doctrine Held Applicable to Pedestrian's Injury.**—Where the lookout man on a backing engine merely whistled through his teeth to warn a pedestrian approaching the danger zone line, who failed to notice the warning or hear the engine, then far enough away for blowing the whistle or tapping the bell and slackening the speed, which would have prevented injury, the railroad company was liable under the last clear chance doctrine.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 127 et seq.]

Error to Corporation Court of Charlottesville.

Action by J. L. Blue against the Director General of Railroads. From judgment for plaintiff, defendant brings error. Affirmed.

*Robert B. Tunstall*, of Norfolk, and *Perkins, Walker & Battle*, of Charlottesville for plaintiff in error.

*Fife & Pitts* and *F. C. Moon*, all of Scottsville, for defendant in error.

BAYLOR *v.* HOOVER.

Nov. 17, 1921.

[109 S. E. 578.]

**1. Brokers (§ 85 (1)\*)—In Suit for Commission, Held Not Error to Admit Contract of Husband and Wife, and to Show that It Was the Contract of the Husband Only, and Accepted as Such.**—In an action by a real estate agent to recover a commission for procuring a purchaser who without authority signed his wife's name to the contract

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

as joining with him therein, it was not error to permit plaintiff to introduce the contract in evidence, and to permit him to prove, as he contended, that it was the contract of the husband only, and accepted by defendant as such, though the latter had attempted in a prior suit to hold both parties as purchasers on a failure to comply therewith.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 638 et seq.]

**2. Estoppel (§ 68 (3)\*)—Rights of Real Estate Agent to Collect Commission from Owner Not Prejudiced because He Aided the Owner in a Suit on a Contract of Sale as a Joint Contract.**—Where a real estate agent aided a landowner in a suit on a contract for the sale of land on the theory that the contract was a joint contract of the purchaser and his wife, he is not precluded in a subsequent suit against the owner for his commission, from offering the contract in evidence upon the theory that it was a contract of sale entered into by the husband only.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 638 et seq.]

**3. Brokers (§ 86 (1)\*)—Evidence Held to Sustain Verdict for Broker Suing for Commission.**—In an action for commission for sale of land, evidence held sufficient to sustain verdict for plaintiff.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 638 et seq.]

**4. Judgment (§ 533\*)—Statement of Court in Former Action against Husband and Wife, as Alleged Purchasers, that a Sale of Land Had Not Taken Place, Not Controlling in an Action by Real Estate Agent against Owner of Land for Commission.**—Where the owner of land sued a purchaser and his wife on a contract of sale as codefendants, a statement of the court that a sale had never taken place does not control in an action by the real estate agent against the owner to recover his commission, on the theory that the contract of sale was entered into by the husband alone.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 638 et seq.]

Error to Corporation Court of Staunton.

Action by J. Earl Hoover against G. Frank Baylor. In the first trial, judgment for plaintiff was reversed and remanded. From judgment for plaintiff at the second trial, defendant brings error. Affirmed.

*Jos. A. Glasgow*, of Staunton, for plaintiff in error.

*S. D. Timberlake, Jr.*, of Staunton, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.